

120 FERC ¶ 61,163  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Pacific Gas and Electric Company

Docket Nos. ER05-130-000  
ER05-130-001  
ER05-130-002  
ER05-130-003

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued August 16, 2007)

1. On February 26, 2007, Pacific Gas and Electric Company (PG&E) filed a settlement agreement to resolve all issues in this proceeding, which concerns the interconnection of Trinity Public Utilities District (TPUD) with PG&E.<sup>1</sup> The settlement agreement includes, as Exhibit 1, an executed interconnection agreement (IA) between PG&E and TPUD. The IA replaces the existing, unexecuted IA filed in this docket on November 1, 2004.<sup>2</sup>
2. Western, TUPD, and Commission Trial Staff submitted comments in support of the settlement agreement. No other comments were filed. On April 4, 2007, the Presiding Administrative Law Judge certified the settlement agreement to the Commission as uncontested.
3. The settlement agreement is in the public interest and is hereby approved. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

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<sup>1</sup> The parties to this proceeding are: PG&E, TPUD, and the Western Area Power Administration (Western). The parties to the executed IA are PG&E and TPUD.

<sup>2</sup> PG&E filed the original IA on November 1, 2004. The Commission accepted the proposed IA for filing, suspended it for a nominal period, made it effective as of January 1, 2005, subject to refund, and set the matter for hearing and settlement judge procedures. *See Pacific Gas and Electric Company*, 109 FERC ¶ 61,392 P 38 (2004), *reh'g denied*, 111 FERC ¶ 61,156 (2005).

4. The standard of review for any modifications to this settlement that are not agreed to by the settling parties shall be the “public interest” standard under the *Mobile-Sierra* doctrine.<sup>3</sup> As a general matter, parties may bind the Commission to a public interest standard of review. *Northeast Utilities Service Co. v. FERC*, 993 F.2d 937, 960-62 (1<sup>st</sup> Cir. 1993). Under limited circumstances, such as when the agreement has broad applicability, the Commission has the discretion to decline to be so bound. *Maine Public Utilities Commission v. FERC*, 454 F.3d 278, 286-87 (D.C. Cir. 2006). In this case, we find that the public interest standard should apply.

5. The rate schedule sheets submitted as part of the settlement are in compliance with Order No. 614. *See Designation of Electric Rate Schedule Sheets*, Order No. 614, 65 Fed. Reg. 18,221, FERC Statutes & Regulations, Regulations Preambles July 1996-December 2000, ¶ 31,096 (2000). The rate schedules are hereby accepted for filing and made effective as specified in the settlement.

6. This order terminates Docket Nos. ER05-130-000, ER05-130-001, ER05-130-002, and ER05-130-003.

By the Commission. Commissioners Kelly and Wellinghoff dissenting in part with separate statements attached.

( S E A L )

Kimberly D. Bose,  
Secretary.

cc: All Parties

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<sup>3</sup> *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

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Docket Nos. ER05-130-000  
ER05-130-001  
ER05-130-002  
ER05-130-003

(Issued August 16, 2007)

KELLY, Commissioner, *dissenting in part*:

This settlement resolves issues related to an interconnection agreement (IA) between PG&E and Trinity Public Utilities District (TPUD). The settlement indicates that the parties intend the “just and reasonable” standard of review to apply with respect to any future changes to the settlement. Specifically, Article II.B. provides: “[n]othing in this Settlement agreement is intended to limit the right of any Party, in any subsequent proceeding under Sections 205 or 206 of the Federal Power Act, concerning the rates, terms or conditions for service under the Settlement IA, or to raise or to defend against any claim relating to the justness and reasonableness of the rates, terms or conditions filed in any such subsequent proceeding.” Similarly, in section 32 of the Settlement IA, PG&E reserves its right under the IA to apply unilaterally to the Commission for a change in rates, terms and conditions of service under FPA section 205, and TPUD reserves its right to oppose such a change. In their explanatory statement, however, the parties state that it is their intent that “the Settlement cannot be changed unless a showing is made that the public interest requires it.”

Although this order does not address the parties’ conflicting language as to the applicable standard of review, it concludes that the “public interest” standard shall apply. Because the language is clear in the settlement and Settlement IA that the parties intend the “just and reasonable” standard of review to apply, I believe that this is the appropriate standard of review to apply to any future changes to the settlement. Accordingly, I respectfully dissent in part from this order.

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Sudeen G. Kelly

UNITED STATES OF AMERICA  
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Pacific Gas and Electric Company

Docket Nos. ER05-130-000  
ER05-130-001  
ER05-130-002  
ER05-130-003

(Issued August 16, 2007)

WELLINGHOFF, Commissioner, dissenting in part:

It is unclear what standard of review the parties in this case have asked the Commission to apply when it considers future changes to the instant settlement that may be sought by any of the parties, a non-party, or the Commission acting *sua sponte*.

The settlement agreement states that it is not intended “to limit the right of any Party, in any subsequent proceeding under Sections 205 or 206 of the Federal Power Act, concerning the rates, terms or conditions for service under [the parties’ executed Interconnection Agreement], or to raise or to defend against any claim relating to the justness or reasonableness of the rates, terms or conditions filed in any such subsequent proceeding.” While that provision suggests that future changes to the settlement may be based on the “just and reasonable” standard, the explanatory statement accompanying the instant settlement states that “[i]t is the parties’ intent ... that the Settlement cannot be changed unless a showing is made that the public interest requires it.”

Without addressing this apparent conflict, the Commission concludes that the “public interest” standard will apply to any future changes to the instant settlement that are not agreed to by the parties. Because the facts of this case do not satisfy the standards that I identified in *Entergy Services, Inc.*,<sup>1</sup> I believe that it is inappropriate for the Commission to agree to apply the “public interest” standard to future changes to the settlement sought by a non-party or the Commission acting *sua sponte*. In addition, for the reasons that I identified in *Southwestern Public Service Co.*,<sup>2</sup> I disagree with the Commission’s characterization in this order of case law on the applicability of the “public interest” standard.

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<sup>1</sup> 117 FERC ¶ 61,055 (2006).

<sup>2</sup> 117 FERC ¶ 61,149 (2006).

For these reasons, I respectfully dissent in part.

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Jon Wellinghoff  
Commissioner